

Remarks

In the Office Action dated February 25, 2010, the Examiner notes that the allowability of claim 7 is withdrawn in view of a newly discovered reference and that the Notice of Allowance is vacated. The drawings and the specification are objected to. Claim 7 stands rejected under 35 U.S.C. § 103(a) over Moser (U.S. Patent No. 6,853,696) in view of Sudjian (U. S. Patent No. 7,409,027) and further in view of Tamaki (U.S. Patent no. 6,218,907). The Office Action indicates that claims 1-2, 5-6 and 8-9 are allowed. Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

Regarding the objection to the drawings, Applicant traverses because the symbol selection is a matter of choice and not a requirement generally or for understanding Applicant's claimed invention. Notwithstanding, Applicant has proposed replacement drawings to conform with the noted suggestions.

Regarding the objection to the Specification, Applicant has amended the Specification to replace "INP" with "In" and "D1" with "D"

Applicant respectfully traverses the § 103(a) rejection because the cited references in combination lack correspondence to any embodiment operative for the intended purposes of the '696 reference; those purposes expressly set forth at Col 2:12-39 (*see also* Col. 2:40-62).

To the extent that the Examiner's overly-generalized combination of circuit elements can be understood, Applicant traverses because the improper statement of motivation would not appear to be compatible with the cited aspects of the '696 reference. See M.P.E.P. § 2143.01 which prohibits such a rejection when the asserted modification undermines either the operation or the purpose of the main reference - the rationale being that the prior art teaches away from such a modification. In this instance, the Office Action has not explained how the circuits of the asserted prior art could be assembled into an operative embodiment in any consistent form and Applicant respectfully submits that they could not. Moreover, the Examiner's rejection proposes that a skilled artisan would be led by the prior art to entirely change the design, purpose and operation of the '696 reference for a purported advantage (*i.e.*, frequency detection)

already realized without the modification. Thus, the Office Action characterizes the motivation in pertinent part as follows: “in order to perform similar functions” and “to yield the predictable benefits and results of implementing frequency detection”. The U.S.P.T.O. Board of Patent Appeals has repeatedly ruled that such asserted combinations are improper because there would be no reason for a skilled artisan to pursue a new design where a problem is nonexistent for the alleged solution or advantage. Such rulings are also consistent with M.P.E.P. § 2141 which prohibits changing the circuitry to perform different functions (“the elements in combination do not merely perform the function that each element performs separately”), and *In re Kubin*, 561 F.3d 1351 (Fed. Cir. 2009) which explains that rationale aligned with “obvious to try” motivational statements are improper hindsight rejections. The rejection of claim 7 should be removed.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and that the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, David Schaeffer, of NXP Corporation at (212)876-6170.

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Attachment: Proposed Replacement Drawing Sheet